NO. 48556-7-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

STARLA R. CLEMENS,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID EDWARDS, JUDGE

BRIEF OF RESPONDENT

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RESPONDENT'S COUNTER STATEMENT OF THE CASE

The Appellant, Starla Clemens, was charged by Amended Information in Grays Harbor County Superior Court with four total counts of a Violation of the Uniform Controlled Substances Act: three for Delivery of Methamphetamine occurring on June 4, June 26, and July 14, 2013, and one for Possession of Methamphetamine on September 3, 2014. Clerk's Papers (CP) 17-19. Counts one through three each alleged a school zone enhancement under RCW 69.50.435. CP 17-18.

On October 30, 2015, a hearing was held pursuant to CrR 3.5, at which time the Honorable Judge Stephen Brown made an oral ruling and found the Appellant's statements admissible at trial. Report of Proceedings (RP) 53-55. The filing of written findings and conclusions was overlooked.

Trial proceeded on January 5 through January 7, 2016, at which time the jury heard testimony from Sergeant Joe Strong, Informant Chivonne Sampson, Detectives Ron Bradbury and Kevin Schrader, Forensic Scientist Debra Price, Transportation Supervisor Ernie Lott, and Geographic Information Systems Analyst Daniel Ehreth. Report of Proceedings Volume I (1RP) 2; Report of Proceedings Volume II (2RP) 212. The Appellant rested immediately after the State did so. 2RP 350.

Aside from testimony proving that the Appellant did indeed deliver and possess methamphetamine on the dates in question—a truth that the Appellant does not contest—there were several facts elicited at trial with regard to the location of bus stops and schools in relationship to 208 N Washington in Aberdeen, the residence identified by the detectives and the informant as the one within which the Appellant sold the informant methamphetamine during each of the three controlled buys. 1RP 24, 96.

The first mention of a nearby school came with the testimony of Sergeant Strong, who testified and demonstrated on an overhead map that during the first controlled buy, his role was to act as surveillance a couple of blocks to the north of 208 North Washington, near Harbor High School. 1RP 33-35. The sergeant identified the teacher's parking lot of the school as the location from which he conducted surveillance. 1RP 35. Later, defense counsel actually had Sergeant Strong estimate how far this was from 208 North Washington, to which the sergeant testified that he believed it to be approximately 600 feet. 1RP 69. Counsel also emphasized this distance later in his questioning of the sergeant. 1RP 75.Throughout direct and cross examinations, nearby Harbor High was used as a reference point on the map to describe where detectives were positioned and where the informant traveled as she walked the few blocks

from the detective's vehicle to 208 North Washington. 1RP 75, 96, 105, 151, 154-57, 159, 166, 196; 2RP 254, 264. During Detective Bradbury's direct examination, he testified about the surveillance he performed in June and July of 2014 on 208 North Washington (2RP 229-30) and about his familiarity with this area of Aberdeen as the department for which he worked. 2RP 233-34. He testified that during this time, he observed school bus stops in the area, having identified them as such due to seeing children getting off the bus, the bus being stopped there, and the bus picking up children. 2RP 234. Again using the overhead map, the detective specifically identified two stops that he was aware of in the area: one at the northeast corner of Miller Junior High and another at First and Alder. 2RP 234-35.

Transportation Supervisor Ernie Lott then testified about his knowledge of the location of local schools and bus stops, stating that he had held his position for the last five years. 2RP 303. When asked if there were "Aberdeen School District bus stops" at 405 North Park, at South Park and Wishkah, and at North Alder and First Street, Mr. Lott confirmed that there were. 2RP 306. These stops, which he testified he confirmed the locations of with GIS Analyst Daniel Ehreth in admitted Exhibit 16, were not new but instead were "established bus stops" which had "been there

since [he'd] been there." 2RP 307-08. After explaining in detail how he had plotted each school bus stop, school, and each 1,000 foot buffer zone in Exhibit 16, GIS Analyst Daniel Ehreth summarized for the jury that 208 North Washington fell within 1,000 feet of three different school bus stops as well as within 1,000 feet of Harbor High School. 2RP 344.

The jury returned verdicts of guilty for all charges and all enhancements. CP 28-34. This appeal follows.

RESPONSE TO ASSIGNMENTS OF ERROR

1. When viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the Appellant committed each of the three deliveries of a controlled substance within 1,000 feet of a school or school bus stop route.

When the sufficiency of the State's evidence is challenged, the conviction will be affirmed if the court is satisfied there is sufficient evidence to justify any rational trier of fact to find guilt beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980). In other words, the evidence has to be sufficient enough to convince *at least one* jury and the conviction will be reversed only if no rational trier of fact could find guilt beyond a reasonable doubt. *State v. DeVries*, 149 Wn.2d 842, 72 P.3d 748 (2003). "The inquiry does not require the reviewing

court to determine whether *it* believes the evidence at trial established guilt beyond a reasonable doubt but rather whether *any* rational trier of fact could be so convinced." *State v. Smith*, 31 Wn. App. 226, 640 P.2d 25 (1982). In its examination, the court must accept the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Spruell*, 57 Wn. App. 383, 788 P.2d 21 (1990). Additionally, all of the evidence must be viewed in the light most favorable to the State with all reasonable inferences being interpreted "most strongly against the defendant." *State v. Taylor*, 97 W. App.123, 982 P.2d 687 (1999). Lastly, since credibility is a matter for determination solely by the trier of fact, the court must not consider the credibility of witnesses in making its determination. *State v. McBride*, 74 Wn. App. 460, 873 P.2d 589 (1994). These general rules have been applied in hundreds of reported cases, usually resulting in the conviction being affirmed. Karl B. Tegland, 5 Wash. Prac., Evidence Law and Practice § 301.7 (6th ed. 2016).

Rather than facing the actual evidence presented by the State, the Appellant chooses to focus on and attack only one portion of the exchange with Mr. Lott in assessing the evidence supporting the school zone enhancements. The Appellant does not appear question the existence of the school bus stops and Harbor High School, but only that these stops and

the high school existed at the time of the crimes in June and July of 2013. However, as summarized above, the existence of the high school and its proximity to 208 North Washington were referenced over two dozen times during direct and cross examination of the detectives and the informant as they described the three controlled buys in June and July of 2013. Furthermore, Detective Bradbury testified about his having seen buses and children at two of the stops during the time of the buys. 2RP 234. The Appellant acknowledges that Mr. Lott testified that the stops in question existed for at least the last five years, but chooses to focus on one reference to them as "community" bus stops to argue that they are not "school bus route stops," ignoring the fact that Mr. Lott had already identified them as such. 2RP 306.

The Appellant's argument is erroneous. The jury did not have to make inferences of any kind when they found that the crimes had been committed within 1,000 feet of a school or school bus stop—they were presented with direct testimony on the existence of not just one, but three at the time of the crimes. When viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the Appellant committed each of the three deliveries of a controlled substance within 1,000 feet of a school or school bus stop route.

2. The State concedes that the case should be remanded for entry of findings of fact and conclusions of law pursuant to CrR 3.5.

While reversal may be appropriate where an appellant can show actual prejudice resulting from the absence of findings and conclusions, the burden of proving any such prejudice falls on the appellant. *State v. Head*, 136 Wn.2d 619, 623-24, 964 P.2d 1187 (1998). Prejudice will not be inferred from delay in entry of written findings of fact and conclusions of law. *Id.* at 625. There is neither evidence nor argument by the Appellant that she has been prejudiced. The State concedes that findings and conclusions were not formally entered and that the proper remedy is remand for that purpose.

3. The State defers to this Court on the issue of appellate costs.

Having no position either way as to whether appellate costs should be assessed, the State defers to the sound judgement of this Court.

CONCLUSION

In the case against the Appellant, the evidence supporting the existence of a school or school bus stop within 1,000 feet of and at the time of each crime was sufficient. The Appellant received a fair trial at the conclusion of which twelve jurors found her guilty of all charges and enhancements. This court should uphold those convictions, although

remand is necessary for entry of findings and conclusions stemming from the hearing under CrR 3.5.

DATED this 24th day of January, 2017.

Respectfully Submitted,

BY: s/ Lindsey A. Millar
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GRAYS HARBOR COUNTY PROSECUTOR

January 25, 2017 - 1:59 PM

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